IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No.5293 of l993

Caprihans India Limited ..Petitioner

vs

Mun Corpn of Thane and ors.....Respondents

Mr.P.P.Puria for petitioner

Mr.R.S.Apte for respondents

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 7.6.2005

P.C:

. The only question which arises in this petition is whether the Circular dated 25.6.l993 by the Thane Municipal Corporation in respect of collection of octroi duty is legal. By issuance of the Circular, it was told to the importers that they are going to change the manner and mode of collection of octroi duty. According to the Circular it is suggested that the octroi duty is payable on the amount of CIF value plus notional custom duty and the octroi is so collected, will be treated as a deposit on the notional custom duty which will be refunded on satisfactory proof of exemption of custom duty.

. Our attention is brought to the judgment of this

court in the case of Ceat Tyres of India Ltd vs Municipal Corporation of Gr Mumbai reported in l994(73) ELT 39 (Bombay) wherein this court in similar circumstances in respect of Bombay Municipal Corporation has decided the matter . According to the decision this court has held that the method that has been suggested in Circular has found to be improper. It is profitable to extract the relevant portion of the judgment in this connection:

> "The plain reading of the definition makes it clear that the value of the article is to be ascertained at the time of occurrence of the taxing event. The liability to pay octroi duty arises when the article crosses the octroi barrier of the Corporation. While determining value of the article, every other duty paid in respect of the article is taken into consideration and the amount of duty or the charges are included in the value of the article. While determining the value of the article, the quantum of customs duty,excise duty, sales tax etc are also included. It is not in dispute that at the time of the entry into octroi limits of the Corporation, the

company was not liable to pay any customs duty in view of the exemption granted by the Government. It is therefore difficult to appreciate how the Corporation can include the amount of customs duty while ascertaining the value of the article".

. Mr Apte learned counsel appearing for the respondents fairly conceded that the issue is covered by the aforesaid judgment. Accordingly the writ petition is allowed. Notice issued to the petitioner is quashed . It is open to the respondent to formulate methodology as suggested by this court in para 5 of the aforesaid judgment.